

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HYDROFLOW USA, LLC, a Washington
limited liability company,

Plaintiff,

v.

ECO INTEGRATED TECHNOLOGIES,
INC., a Delaware corporation; JESS RAE
BOOTH; WALTER CARLSON; and
PEYTON JACKSON,

Defendants.

CASE NO. 2:23-cv-01317-TL

ORDER ON MOTION FOR
ALTERNATIVE SERVICE

This is an action for breach of contract, unfair competition, and related claims stemming from the sale of water treatment products. This matter is before the Court on Plaintiff *HydroFLOW USA, LLC*'s Motion for Alternative Service. Dkt. No. 55. Having considered the relevant record, the Court DENIES the motion and further DISMISSES WITHOUT PREJUDICE Defendant Peyton Jackson from this matter.

I. BACKGROUND

The Court assumes familiarity with the facts of the case. Relevant to the instant motion, on October 26, 2023, Defendants filed a partial motion to dismiss for failure to state a claim. Dkt. No. 28. On March 11, 2024, the Court dismissed Plaintiff's breach of contract and civil-conspiracy claims with leave to amend. Dkt. No. 48. Plaintiff subsequently filed an amended complaint on April 5, adding Defendant Jackson as a party to the action. Dkt. No. 49. Plaintiff now alleges that Defendant Jackson is one of the architects of Defendant ECO Integrated Technologies, Inc. ("ECO")'s plan to wrongfully obtain products competitive to Plaintiff in contravention of a now-terminated Distributor Agreement established between Plaintiff and Defendant ECO. *See, e.g., id.* ¶¶ 2.19–2.22.

Upon adding Defendant Jackson, Plaintiff made multiple attempts at completing service. On May 22, Plaintiff first contacted Washington Legal Messengers ("WLM") to locate the address of Defendant Jackson. Dkt. No. 56 (Rosencrantz declaration) ¶ 3. In a May 28 response to Plaintiff's request, WLM provided two addresses as the result of a "skip trace": 1450 Wynkoop Street Apt 1C, Denver CO 80202 ("Wynkoop Property") and 1360 South Milwaukee Street, Denver, CO 80210 ("Milwaukee Property"). *Id.* ¶ 4. The Wynkoop Property is believed to be Defendant Jackson's personal residence and the Milwaukee Property is believed to be either Defendant Jackson's new address or his adult daughter's home. Dkt. No. 56-1 (email exchange with WLM) at 2.

A process server made four attempts to serve Defendant Jackson at the Wynkoop Property: (1) on Thursday, May 30, service was attempted at 2:58 p.m.; (2) on Monday, June 3, service was attempted at 9:16 a.m.; (3) on Tuesday, June 4, service was attempted at 7:25 p.m.; and (4) on Wednesday, June 5, service was attempted at 7:38 a.m. The building was inaccessible on each attempt. *See* Dkt. No. 56-2 (affidavit of non-service).

1 Four additional attempts to serve Defendant Jackson at the Milwaukee Property were
2 made. On Thursday, June 13, at 4:35 p.m., a process server asked neighbors about house 1360 at
3 4:35 pm, to which they responded that they were unaware of who the residents are and that no
4 one was home at that address. *See* Dkt. No. 56-3 (affidavit of non-service). Then the process
5 server made the attempts: (1) on Wednesday, June 19, service was attempted at 6:49 p.m.; (3) on
6 the same day, service was attempted again at 9:00 p.m.; (4) on Thursday, June 20, service was
7 attempted at 11:30 a.m.; and (5) on the same day, service was attempted again at 1:07 p.m. *Id.*
8 No one answered the door on each attempt. *Id.*

9 Plaintiff's process server has attempted to contact Defendant Jackson via an undisclosed
10 number of phone calls and voice mails, to which Defendant Jackson has neither answered nor
11 returned. *See* Dkt. No. 56-4 (email exchange with WLM) at 3. Finally, on July 2, WLM updated
12 Plaintiff on the results of an additional credit check that morning, stating that no additional
13 address was found where service could be attempted. *Id.* at 2.

14 Plaintiff now brings the instant motion for alternative service, filed with the Court on
15 August 20, in the interest of completing service on Mr. Jackson. Dkt. No. 55.

16 II. LEGAL STANDARD

17 Any method of service must comport with constitutional notions of due process and must
18 be "reasonably calculated, under all the circumstances, to apprise interested parties of the
19 pendency of the action and afford them an opportunity to present their objections." *Rio Props.,*
20 *Inc. v. Rio Interlink*, 284 F.3d 1007, 1016–17 (9th Cir. 2002) (quoting *Mullane v. Cent. Hanover*
21 *Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). Federal and state rules enforce this principle with
22 specific guidelines regarding the means and methods by which service of process should be
23 accomplished.

1 Federal Rule of Civil Procedure 4(m) establishes clear time limits for service:

2 If a defendant is not served within 90 days after the complaint is
 3 filed, the court—on motion of on its own after notice to the
 4 plaintiff—must dismiss the action without prejudice against that
 5 defendant or order that service be made within a specified time.
 6 But if the plaintiff shows good cause for the failure, the court must
 7 extend the time for service for an appropriate period.¹

8 Service of process on an individual within a judicial district of the United States may be
 9 effected in accordance with authorized methods so provided by the law of the state in which
 10 service is to be made. Fed. R. Civ. P. 4(e)(1). In Colorado, parties to an action must be served
 11 personally by delivering a copy of the summons and complaint to the relevant party or upon
 12 another person authorized to receive said service of process. C.R.C.P. 4(e). Where personal
 13 service is unable to be accomplished, however, the court may consider an alternative method of
 14 service if a party files a motion, supported by an affidavit of the person attempting service, for an
 15 order of substituted service. C.R.C.P. 4(f); *see also Allen v. The Pinery, LLC*, No. C17-688, 2017
 16 WL 3492872, at *1 (D. Colo. Aug. 15, 2017). The motion shall state (1) the efforts made to
 17 obtain personal service and the reason that personal service could not be obtained, (2) the
 18 identity of the person to whom the party wishes to deliver the process, and (3) the address, or
 19 last-known address of the workplace and residence, if known, of the party upon whom service is
 20 to be effected. C.R.C.P. 4(f). If the court is satisfied that:

- 21 (1) due diligence has been used to attempt personal service
- 22 under section (e),
- 23 (2) that further attempts to obtain service under section (e)
- 24 would be to no avail, and
- (3) that the person to whom delivery of the process is
- appropriate under the circumstances and reasonably

¹ Under Colorado law, the time limit for service of process is more exacting and provides that a defendant must be served within 63 days after the complaint is filed with the court. C.R.C.P. 4(m). Like the federal rule, the consequence of failure to complete service within the stipulated time frame is dismissal without prejudice against that defendant, an order for service to be made within a specified time, or an extension in cases where good cause is demonstrated. *Id.*

1 calculated to give actual notice to the party upon whom
2 service is to be effective,
3 then alternative service, as deemed appropriate by the Court, may be authorized. *Id.*

4 **III. DISCUSSION**

5 Plaintiff seeks the Court's leave for alternative service on Defendant Jackson by mailing
6 a copy of the summons and complaint to (1) the two addresses in Colorado at which he is
7 believed to reside, (2) Defendants Booth and Carlson at the addresses at which they were
8 personally served, and (3) the counsel of record for Defendants Booth and Carlson.

9 **A. Due Process and Time Limit for Service**

10 Here, Plaintiff has not demonstrated sufficient efforts to complete service upon
11 Defendant Jackson in accordance with the time limit for service.

12 The Amended Complaint (wherein Defendant Jackson was first named as a defendant)
13 was filed on April 5, 2024. Service was due by July 5. Fed. R. Civ. P. 4(m). Plaintiff not only
14 failed to file its motion for alternative service until August 20—46 days after service should have
15 been completed—but also failed to provide any explanation whatsoever for making the motion
16 weeks after the deadline for service had already passed. Dkt. No. 55.

17 Necessary to, but missing from, Plaintiff's motion is a request for an extension of time to
18 serve Defendant Jackson. *See id.* Local Civil Rule 7(j) requires any motion for relief from a
19 deadline to "be filed sufficiently in advance of the deadline to allow the court to rule on the
20 motion prior to the deadline." And this Court's Standing Order for All Civil Cases (which
21 counsel for Plaintiff certified reviewing, *see* Dkt. No. 46), requires that motions for extensions of
22 time "shall be filed at least three (3) business days in advance of the expiration of the relevant
23 deadline." § III(A) (last updated May 2, 2024). That Plaintiff failed to comply with the local
24 rules and this Court's standing order is grounds alone for denial of its request.

1 But Plaintiff further has not demonstrated good cause for extending time for service. Fed.
2 R. Civ. P. 4(m). Plaintiff first contacted WLM to assist with completing service 47 days after the
3 Amended Complaint was filed. *See* Dkt. No. 56 ¶ 3. Plaintiff references four attempts at
4 completing service for Defendant Jackson at each of his purported properties. *See* Dkt. No. 55 at
5 4. But the attempts at the Wynkoop Property were made within a span of six days, all these
6 attempts were on a weekday, and three of these four attempts were during working business
7 hours. Moreover, attempts at the Milwaukee Property were made within a span of only 24 hours.
8 Again, all attempts at service at this second address were made on a weekday—two of which
9 were during working business hours, and one of which was when an employed person may very
10 well already have left for work. Notwithstanding the fact that all attempts at service were made
11 during short periods of time, the hours of the day at which Plaintiff attempted service are
12 inconsistent with Plaintiff's argument that Defendant Jackson is employed and an executive
13 colleague of Defendants Booth and Carlson.

14 In the approximately two months between the last attempt at service and filing the instant
15 motion, Plaintiff also appears to have not initiated any other kind of action to complete service.
16 The last attempt at service was made on June 20. Apart from vague and undated references to an
17 undetermined number of phone calls made, voice messages left, and a single additional credit
18 check for Defendant Jackson two days before the Rule 4(m) deadline for service, Plaintiff cites
19 no further action. Nevertheless, Plaintiff again proceeded to engage in significant delay by
20 waiting another 61 days after its last attempt before requesting the Court's leave for alternative
21 service.

22 For all these reasons, the Court's intervention is unnecessary and alternative service
23 would be inappropriate in this case. The Court does not find good cause for failure to complete
24 service. Nevertheless, as explained below, the Court also finds that even if Plaintiff were diligent

1 and timely in requesting alternative service, Plaintiff fails to show due diligence in attempting
2 personal service.

3 **B. Alternative Service Under Federal Rule 4(e)(1) and CRCP 4(f)**

4 Under Colorado law, when personal service is unable to be completed, the Court may
5 authorize and order an alternative method of service if it is satisfied that “due diligence has been
6 used to attempt personal service,” among other requirements. C.R.C.P. 4(f)(1).

7 Due diligence does not require that a plaintiff succeed in serving a defendant or exhaust
8 every possible option in attempting to do so. *Minshall v. Johnston*, 417 P.3d 957, 961 (Colo.
9 App. 2018) (quoting *Willhite v. Rodriguez-Cera*, 274 P.3d 1233 (Colo. 2012)). Rather, it refers
10 to the diligence “reasonably expected from, and ordinarily exercised by, a person who seeks to
11 satisfy a legal requirement or to discharge an obligation.” *Owens v. Tergeson*, 363 P.3d 826, 835
12 (Colo. App. 2015). “There is no objective, formulaic standard for determining what is, or is not,
13 due diligence,” and it is “not quantifiable by reference to the number of service attempts or
14 inquiries into public records.” *Id.* (quoting *Abreu v. Gilmer*, 985 P.2d 746, 749 (Nev. 1999)).
15 Instead, courts must consider the *qualitative* efforts made to locate and serve a specific
16 defendant, as tailored to fit the circumstances of each case, and inclusive of affirmative steps
17 engaged to follow up on information or resources possessed and reasonably available to the
18 plaintiff. *Owens*, 363 P.3d at 836–37 (finding due diligence unmet when plaintiff did not identify
19 discrepancies in publicly recorded title chain); *Allen*, 2017 WL 3492872, at *2 (finding due
20 diligence when service was attempted four times at three separate locations including a
21 residence, mailbox center, and church purportedly frequented, in addition to several requests for
22 others to accept service on plaintiff’s behalf).

23 Plaintiff argues that alternative service is appropriate in the current case, citing
24 *Minshall*’s “overwhelming” support for a finding of due diligence when outside investigators

1 were hired and four attempts to effect personal service were made. *See* Dkt. No. 55 at 4.
2 However, reliance on this holding is both misleading and misplaced. The basis for the court’s
3 finding was grounded in quality of attempts—not quantity. The plaintiff in *Minshall* hired an
4 investigator to identify defendant’s address, hired another investigator that attempted service four
5 times, investigated the address where defendant’s vehicle was registered, attempted service at
6 defendant’s last known “usual workplace,” and tried to contact defendant through both their son
7 and realtor. 417 P.3d at 960–61.

8 In the present case, Plaintiff has indeed recorded eight attempts at completing service
9 upon Defendant Jackson. *See* Dkt. Nos. 56-1, 56-2. However, those efforts are unsatisfactory in
10 both quality and diversity. Attempts were made on two unconfirmed addresses, on weekdays,
11 and mostly during business working hours. Beyond these attempts and as previously discussed,
12 Plaintiff only proffers an undisclosed number of total credit checks (presumably two, as the
13 process server “ran his credit record *again*,” Dkt. No. 56-4 at 2 (emphasis added)) in addition to
14 an undetermined number of phone calls made to and voice messages left with Defendant
15 Jackson’s phone. *See id.* at 2–3. No other investigators or process servers were engaged. No
16 public records were evaluated. While Plaintiff identifies one address as potentially belonging to
17 Defendant Jackson’s daughter (*see* Dkt. No. 56-1 at 2), no efforts were made to contact the
18 daughter to better determine his whereabouts. Moreover, while Plaintiff insists on the likelihood
19 that Defendant Jackson, as an executive colleague of Defendants Booth and Carlson, is in
20 communication with them (*see* Dkt. No. 55 at 5), Plaintiff describes no efforts to find Defendant
21 Jackson’s place of work or any other effort beyond having the process server run a skip trace.

22 Plaintiff argues that due diligence does not require success in serving a defendant or the
23 exhaustion of every possible option in attempting to do so. *See* Dkt. No. 55 at 4. The Court
24 agrees. However, Plaintiff’s efforts made must still indicate meaningful interest in actually

1 accomplishing said service upon defendant. As the United States Supreme Court noted in
2 *Mullane*, “When notice is a person’s due, process which is a mere gesture is not due process.”
3 339 U.S. at 315.

4 Ultimately, Plaintiff’s efforts are more reflective of gesture rather than sincere efforts to
5 complete service. Plaintiff dragged its feet in attempting service by waiting nearly seven weeks
6 after filing its Amended Complaint before first contacting process servers. The attempts at
7 service appear superficial and lack a demonstration of good faith efforts to meet Plaintiff’s duty
8 of due diligence. Moreover, Plaintiff failed to further investigate available information, as
9 discussed above. Therefore, Plaintiff has not demonstrated due diligence.²

10 IV. CONCLUSION

11 Accordingly, Plaintiff’s Motion for Alternative Service (Dkt. No. 55) is DENIED and
12 Defendant Peyton Jackson is DISMISSED WITHOUT PREJUDICE from this action.

13 Dated this 9th day of October 2024.

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15 _____
16 Tana Lin
17 United States District Judge
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23 _____
24 ² As the Court does not find due diligence, it need not address any further requirements for alternative service under Colorado law.